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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 11 1996

OFFICE SECRETARY

In the matter of)	
)	
Amendment of the Commission's Rules)	WT Docket No. 95-157
Regarding a Plan for Sharing the Costs)	RM-8643
of Microwave Relocation)	

To: The Commission

REPLY COMMENTS OF THE
AMERICAN PUBLIC POWER ASSOCIATION

AMERICAN PUBLIC POWER ASSOCIATION
2301 M St., N.W.
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(202) 467-2900

December 21, 1995

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AMERICAN PUBLIC POWER ASSOCIATION**

Pursuant to the Notice of Proposed Rule Making (NPRM), FCC 95-157, released November 1, 1995, the American Public Power Association (APPA) hereby respectfully submits its Reply Comments in the above-captioned proceeding.

I. Introduction

APPA is the national service organization representing the interests of over 2,000 local, consumer-owned electric utility systems throughout the country. Approximately 50 APPA members operate fixed microwave systems in the 1.85-1.99, 2.13-2.15, and 2.18-2.20 GHz (2 GHz) bands. These facilities range in size and complexity from simple, one-path analog systems to multichannel digital systems spanning more than 900 total miles.

APPA members use these facilities for real-time control, monitoring, and dispatch of electric generation and transmission facilities, as well as long- and medium-haul remote data and voice communications. Typical usage would include: (1) remotely detecting, isolating and clearing fault conditions on high-power transmission lines within milliseconds, thereby preventing blackouts and loss of lives and property; (2) bringing nuclear, thermal and hydroelectric generation stations on- and off-line to instantaneously match system capacity with demand; (3) forwarding critical telemetry data between and among a utility's substations, operations control centers, generation stations and other utilities; and (4) controlling mobile radio base stations and other radio systems used for load control, environmental monitoring and nuclear plant operations.

Because these member systems depend upon reliable and secure communications facilities in carrying out their public service obligations, APPA has been an active participant in this proceeding and other activities dealing with the use of the 2 GHz band for fixed microwave.

II. The Commission Should Reject Proposals to Retroactively Modify its 2 GHz Microwave Relocation Rules

In Comments filed with the Commission in the above-captioned proceeding, the Cellular Telephone Industry Association (CTIA) and the Personal Communications Industry Association (PCIA) both assert that numerous “bad actors” are impeding the microwave relocation process and effectively devaluing the spectrum. Although very limited evidence has been offered to substantiate these claims, CTIA, PCIA and other advocates of the Personal Communications Services (PCS) industry persist in using inflated rhetoric to make sweeping accusations against the entire 2 GHz incumbent community.

While cloaking themselves in a veil of sanctimony, these parties fail to acknowledge that the Commission’s regulatory structure has been largely successful in facilitating relocation through market-based negotiations. The recent deployment of PCS in the Washington, D.C. and Baltimore, Maryland region is a clear case in point.

Interestingly, CTIA made similar arguments before Congress in the context of recent negotiations on budgetary legislation, but it was ultimately unsuccessful in making a persuasive case for a retroactive legislative modification of the Commission’s relocation rules. CTIA’s proposal would have shortened the voluntary negotiation period from two years to one year and established a date certain for the start of the mandatory negotiation period. In its Comments in the above-captioned proceeding, PCIA suggests complete elimination of the voluntary negotiation period.

Both of these proposals are inconsistent with the Commission’s stated objectives for 2 GHz microwave relocation and go far beyond the scope of the present rulemaking. The

Commission's *First Report and Order and Third Notice of Proposed Rule Making*, ET Docket No. 92-9, 57 F.R. 49020 (October 29, 1992) ("*ET First Report and Order*"), established a regulatory process that is designed to encourage voluntary negotiations between current 2 GHz microwave incumbents and emerging technology licensees. Since issuance of the *ET First Report and Order*, the Commission has repeatedly encouraged parties to use expedited alternative dispute resolution procedures, such as binding arbitration and mediation, to resolve disagreements that arise during negotiations.

APPA and other incumbent users in the 2 GHz band have attempted to work with CTIA and other interested parties to develop a non-legislative, industry solution that addresses our mutual concerns about bad actors in the negotiation process. On November 3, 1995, APPA and the incumbent coalition submitted a written statement of principles to CTIA as a basis for discussion of an alternative dispute resolution proposal (a copy is attached as "Exhibit A"). It is APPA's understanding that CTIA has not formally responded to the proposal and continues to pursue a separate legislative initiative.

CTIA, PCIA and other PCS industry advocates have been active participants throughout the Commission's rulemaking process. APPA believes that it is fundamentally unjust for these parties to now seek retroactive modification of the Commission's relocation rules, which were agreed to by both the PCS industry and the current 2 GHz microwave users prior to the first PCS auctions.


III. Conclusion

The PCS industry's exaggerated claims of widespread bad faith on the part of incumbent 2 GHz users, buttressed primarily by anonymous horror stories, provide no justification for a broad rewrite of the Commission's microwave relocation regulations. Such action is beyond the scope of the present rulemaking and is unnecessary, since the incumbent 2 GHz community has already proposed an alternative dispute resolution procedure to address the mutual concern of bad faith in the negotiation process. For these reasons, APPA respectfully urges the Commission to summarily reject such requests.

WHEREFORE, THE PREMISES CONSIDERED, the American Public Power Association respectfully requests the Commission to take actions consistent with the views expressed herein.

Respectfully submitted,

AMERICAN PUBLIC POWER ASSOCIATION

By: 
M. Todd Tuten
Government Relations Representative

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December 21, 1995



The Telecommunications Association

EXHIBIT A

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November 3, 1995

Wallace Henderson
Cellular Telecommunications Industry Association
1250 Connecticut Ave., NW
Suite 200
Washington, DC 20036

Re: Microwave Industry ADR Proposal

Dear Wallace:

Pursuant to our on-going meetings, attached is a statement of principles regarding the proposed alternative dispute resolution (ADR) procedure for resolving 2 GHz relocation disputes. The incumbent microwave community, consisting of utilities, pipelines, railroads and state and local government agencies, believe that any procedure must incorporate these principles.

As noted in the attached memorandum, there are still a number of issues which need to be resolved. We hope that we can work with your organization to resolve these matters.

Please contact me if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "T. E. Goode", written in a cursive style.

Thomas E. Goode
Staff Attorney

Enclosure

MEMORANDUM

DATE: November 3, 1995

SUBJECT: Alternative Dispute Resolution Procedure

At the behest of Senator John Breaux and Representative Ralph Hall, representatives of the nation's utilities, pipelines, railroads and state and local government agencies (collectively referred to as the "microwave industry") have held a series of meetings during the past month with the PCS industry to discuss concerns regarding the 2 GHz relocation rules. These rules, establishing a framework for the mandatory relocation of the microwave industry to make way for PCS, were promulgated in 1993 by the FCC with very intense Congressional oversight.

Although only four months have elapsed since the first PCS licenses were awarded, the PCS industry is alleging that some microwave licenses are abusing the process established in the rules. The PCS industry has not responded to repeated requests from the microwave industry to identify any "bad actors."

Pursuant to the on-going meetings with the PCS industry, the microwave industry has drafted the following principles which would serve as the basis for a voluntary alternative dispute resolution (ADR) procedure. The ADR procedure could be utilized by incumbents and PCS licensees in resolving disputes over 2 GHz relocations. The microwave industry and the PCS industry share the view that a properly drafted ADR procedure will assist microwave incumbents and PCS licensees in reaching mutually-beneficial relocation agreements.

The microwave industry believes that a voluntary ADR procedure for 2 GHz relocation negotiations and agreements should:

- Be available to both PCS licensees and incumbents;
- Resolve issues quickly;
- Involve a third-party decision-maker outside of the FCC to minimize required FCC resources;
- Require mutual agreement on the identity of third party decision-maker;
- Be based on the rules for alternative dispute resolution of the American Arbitration Association;
- Establish the FCC in an appellate role to make final decisions in the event of a dispute over the ADR process or enforcement of the outcome;

- Require the parties to jointly file a notice with the FCC that they have decided to avail themselves of the ADR procedure for a specific issue; and
- Permit the details of a resolution proceeding to be kept confidential at the request of either party.

The microwave industry is committed to continuing its discussions with the PCS industry over this matter. If a voluntary procedure can be agreed to by both sides, the trade associations representing the incumbents and the PCS licensees should sign a joint statement indicating support for this procedure. These same trade associations should take an active role in educating their members as to the procedure.

These principles represent the incumbents' view of the basic framework for an ADR procedure. Input from the PCS industry on these basic issues is necessary before further details can be developed. Among the issues to be addressed are the following:

- What is the standard that the third-party decision-maker will use in resolving a dispute?
- When could the ADR procedure be initiated?
- If ADR is utilized, what is its effect on the remaining negotiation time period for that incumbent and PCS licensee?
- How will the expense of the ADR procedure be allocated?

We look forward to working with the PCS industry to resolve these issues. If there are any questions regarding this matter, please contact Tom Goode, UTC Staff Attorney, at (202) 872-1160.

LIST OF ASSOCIATIONS PARTICIPATING IN DISCUSSIONS

Association of American Railroads

American Gas Association

American Public Power Association

American Water Works Association

Association of Public-Safety Communications Officials International

Cellular Telecommunications Industry Association

Edison Electric Institute

Interstate Natural Gas Association of America

National Rural Electric Cooperative Association

UTC, The Telecommunications Association

CERTIFICATE OF SERVICE

I, M. Todd Tuten, on behalf of the American Public Power Association (APPA), hereby certify that I have caused to be sent, by U.S. mail, on this 21st day of December 1995, a copy of the foregoing to each of the following individuals:

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M. St., N.W., Room 814
Washington, D.C. 20036

The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M. St., N.W., Room 802
Washington, D.C. 20036

The Honorable Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M. St., N.W., Room 826
Washington, D.C. 20036

The Honorable Rachelle B. Chong
Commissioner
Federal Communications Commission
1919 M. St., N.W., Room 844
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The Honorable Susan Ness
Commissioner
Federal Communications Commission
1919 M. St., N.W., Room 832
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M. Todd Tuten